

JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY  
COURT NO. 13

MEYER PROPERTIES	§	
Plaintiff Below,	§	
Appellant	§	
	§	
VS	§	C.A. No. JP13-22-009890
	§	
	§	
MICHELE BEHORNAR	§	
Defendant Below,	§	
Appellee	§	

TRIAL DE NOVO

Submitted: February 16, 2023

Decided: February 16, 2023

**APPEARANCES:**

Meyer Properties, Plaintiff, represented by Form 50 Agent Reba Webb present  
Michele Behornar, Defendant, appeared *Pro Se*

Seam McCormick, Deputy Chief Magistrate  
Peter Burcat, Justice of the Peace  
Amanda Moyer, Justice of the Peace

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY  
COURT NO. 13**

CIVIL ACTION NO: JP13-22-009890

**MEYER PROPERTIES VS MICHELE BEHORNAR**

**ORDER ON TRIAL DE NOVO**

The Court has entered a judgment or order in the following form:

Factual and Procedural Background

On August 31, 2022, Plaintiff MEYER PROPERTIES, by and through their *Form 50* Agent, Reba Webb, filed the present Landlord-Tenant Complaint against Defendant MICHELE BEHORNAR. Plaintiff sought a financial recovery for rent and summary possession of a rental property alleged to be occupied by Defendant. The Court has taken Judicial Notice that for the Complaint's *Concise Statement of Facts*, Plaintiff wrote:

*Plaintiff is the landlord for unit located at 9 E 37th St, Apt 3A, Wilmington, DE 19802. Michele Behornar is the tenant(s), Defendant(s). Plaintiff has a written rental agreement with Defendant(s). Rent is \$850.00, due on the first of each month and late after the 5th. In accordance with 25 Del C S5502, the tenant was notified in writing on July 14, 2022, that the rental agreement would be terminated and that the landlord may file for summary possession if a payment is not made by July 22, 2022. The tenant has not vacated the unit, nor paid the amount demanded by the deadline. I am seeking the relief shown below in addition to possession. A copy of the demand letter is attached*  
(emphasis added)

The "demand letter" referenced in the Complaint was attached to Plaintiff's initial filing. The Court has taken Judicial Notice that the letter is dated August 18, 2022. A review of the Court's Docket for this case does not reflect any document filed by Plaintiff with a date of July 14, 2022. On November 4, 2022, Plaintiff filed an *Alias Landlord-Tenant* Complaint. A review of the *Alias* Complaint reflects that exact same wording as was contained in the original August 31, 2022 filing is included in the *Alias* Complaint. It is unknown why Plaintiff filed an *Alias* Complaint that mirrored in its entirety the original Complaint. Subsequently, Plaintiff filed with the Court a Statement dated February 1, 2023 which appears to be a copy of an account ledger addressed to Defendant. The Court has taken Judicial Notice that Defendant's account balance on July 1, 2022 was "0.00." On July 4, 2022, there is an unexplained charge to the account in the amount of \$43.75. It was not until August 1, 2022, when August's rent charge of \$850.00 is added to the account, that an outstanding account balance of \$893.75 appears in the ledger.

Findings

The *Landlord-Tenant Code* regulates and sets forth the legal rights, remedies and obligations of all of the parties to a residential rental agreement within the State of Delaware. See 25 Del.C. §5101, *et*

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seq. The case at bar is a residential Landlord-Tenant action. A Landlord's remedies for a Tenant's failure to pay rent are set forth in 25 Del.C. §5502(a), which states in pertinent part:

*A landlord or the landlord's agent may, any time after rent is due, including the time period between the date the rent is due and the date under this Code when late fees may be imposed, demand payment thereof and notify the tenant in writing that unless payment is made within a time mentioned in such notice, to be not less than 5 days after the date notice was given or sent, the rental agreement shall be terminated. If the tenant remains in default, the landlord may thereafter bring an action for summary possession of the dwelling unit or any other proper proceeding, action or suit for possession.*

A landlord may bring an action against a tenant for Summary Possession of the demised premises if the tenant "has wrongfully failed to pay the agreed rent." 25 Del.C. §5702(2). When an action is brought pursuant to 25 Del.C. §5702, the Complaint must have the following five (5) contents:

*The complaint shall:*

- (1) State the interest of the plaintiff in the rental unit from which removal is sought;*
- (2) State the defendant's interest in the rental unit and defendant's relationship to the petitioner with regard thereto;*
- (3) Describe the rental unit from which removal is sought;*
- (4) State the facts upon which the proceeding is based and attach a copy of any written notice of the basis of the claim as an exhibit to the complaint; and*
- (5) State the relief sought which may include a judgment for rent due if the notice of complaint contains a conspicuous notice that such demand has been made.*

25 Del.C. §5707. This Court is very cognizant of the wording of 25 Del.C. §5707, and in particular the first three (3) words: "The complaint **shall** . . ." (emphasis added). This is not something a Judge can overlook or waive.

The *Concise Statement of Facts*, as stated in Plaintiff's Complaint herein specifically identifies a July 14, 2022 notice to Defendant. Further, Plaintiff's Complaint states Defendant was to pay all outstanding amounts by July 22, 2022. The *Concise Statement of Facts* does not set forth the account balance on July 14, 2022, but the relief sought is \$936.25. There is nothing in the *Concise Statement of Facts* that supports a claim for \$936.25. As previously stated herein, if there was in fact a balance on July 14, 2022, that balance was \$43.75 for some unknown charge.

A Defendant reading a Complaint is to be put on notice what the Plaintiff is seeking and why Plaintiff is seeking the relief sought. This is the intended purpose of 25 Del.C. §5707. A key word on the Complaint is "concise." In this case, nothing has been submitted to the Court regarding a July 14, 2022 notice to Defendant. As there appears to not in fact be any such notice, Plaintiff's Complaint, and the subsequently filed Alias Complaint, is vague, ambiguous, and confusing. Accordingly, due to Plaintiff's non-compliance with 25 Del.C. §5707, the Complaint must be dismissed without prejudice.

#### Order

Based upon the foregoing, the Court finds the Complaint filed herein is not in compliance with the requirements as set forth in 25 Del.C. §5707. As such, the case is **Dismissed without Prejudice**.

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IT IS SO ORDERED 17th day of February, 2023

/s/ Sean McCormick

SEAN MCCORMICK

DEPUTY CHIEF MAGISTRATE

ON BEHALF OF THREE JUDGES



Information on post-judgment procedures for default judgment on Trial De Novo is found in the attached sheet entitled Justice of the Peace Courts Civil Post-Judgment Procedures Three Judge Panel (J.P. Civ. Form No. 14A3J).